

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARCELONE HUGHES,

Debtor.

CITY OF FRESNO,

Garnishee.

Case No. 1:24-mc-00064-EPG

ORDER REQUIRING RESPONSE FROM  
PLAINTIFF TO DEBTOR'S REQUEST AND  
OBJECTIONS TO WRIT OF CONTINUING  
GARNISHMENT

ORDER DIRECTING THE CLERK OF  
COURT TO SERVE A COPY OF THIS  
ORDER ON DEBTOR AND GARNISHEE

On May 1, 2024, the United States file an application for a writ of continuing ("Application") pursuant to the Federal Debt Collection Procedures Act of 1990 ("FDCPA"), 28 U.S.C. § 3205(b)(1). (ECF No. 1). Plaintiff seeks garnishment of 25% of Debtor Marcelone Hughes' non-exempt disposable earnings held by Garnishee City of Fresno in furtherance of payment of a criminal restitution balance of \$190,722.06, calculated as of May 1, 2024. (*Id.* at 1-2).

According to the Application, Debtor was sentenced in criminal case *United States v. Hughes*, 1:02-cr-05370-DAD-EPG, and ordered to pay a statutory assessment of \$500, a fine of

1 \$2,500, and restitution of \$151,161.00. (*Id.* at 1). The terms of restitution were later modified, and  
2 Debtor was ordered to pay “monthly installments of 5% of his monthly net income or \$150,  
3 whichever is greater.” (*Id.* at 1-2 (citing *U.S. v. Hughes*, 1:02-cr-05370-DAD-EPG, ECF Nos.  
4 161, 162)). Plaintiff asserts that “Debtor has not made any payments toward his debt since March  
5 2023” and that Plaintiff sent Debtor a notice of default and demand for payment in full on  
6 November 9, 2023. (*Id.* at 2).

7 On May 2, 2024, the Clerk of Court executed a Writ of Continuing Garnishment that  
8 required the City of Fresno, as Debtor’s employer and garnishee, to withhold 25% of Debtor’s  
9 non-exempt disposable earnings until the Court issued a further order. (ECF No. 4 at 2). The  
10 Clerk of Court also issued a notice to Debtor that provided instructions and information about  
11 Plaintiff’s Application. (ECF No. 3).

12 On May 2, 2024, Plaintiff filed poof of service that the Application, issued writ, and  
13 instructions was served on Garnishee. (ECF No. 2). On May 7, 2024, Plaintiff filed proof of  
14 service that the Application, issued writ, instructions, and Clerk’s Notice to Debtor was served on  
15 Debtor. (ECF No. 5).

16 On May 13, 2024, the City of Fresno filed a document entitled “Acknowledgement of  
17 Service and Answer of Garnishee,” which acknowledged receipt of the Application and provided  
18 information about Debtor’s gross pay, mandatory withholdings, and interest in an employee  
19 sponsored retirement plan. (ECF No. 6).

20 On May 23, 2024, Debtor, appearing *pro se*, filed a request for a hearing and objections  
21 regarding Plaintiff’s Application.<sup>1</sup> (ECF No. 7). Debtor asserts that he did not understand that he  
22 was to continue making monthly payments after his supervised release ended in March 2023 until

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23 <sup>1</sup> Debtor also “asks to have counsel appointed in this matter, unless payment arrangements can be reached  
24 without further proceedings.” (ECF No. 7 at 3). Although this action arises out of a criminal judgment,  
25 Plaintiff’s application is for civil garnishment pursuant to the FDCPA. *See* 28 U.S.C. § 3001(a)(1). It is  
26 “well-established that there is generally no constitutional right to counsel in civil cases.” *United States v.*  
27 *Sardone*, 94 F.3d 1233, 1235 (9th Cir. 1996). Appointment of counsel may be designated only in  
28 “exceptional circumstances.” *U.S. v. 292, 888.04 in U.S. Currency*, 54 F.3d 564 at 569 (9th Cir. 1995); 28  
U.S.C. § 1915(e)(1). At this time, the Court lacks sufficient information as to Debtor’s likelihood of  
success on the merits such that justice requires the appointment of counsel. Moreover, it appears that the  
legal issues involved are not extremely complex, and that Debtor can adequately articulate his legal  
positions. Accordingly, the Court will deny Debtor’s request for the appointment of counsel without  
prejudice.

Plaintiff's financial litigation contractor, Grace Nelson, informed him that he was delinquent in November 2023. (*Id.* at 4). Debtor states that he could not address the unpaid amount owed by the end of February 2024 due to increased living costs, including housing, transportation, food, fuel, and childcare. (*Id.*) Debtor also states that he "has waited to hear from the financial litigation contractor to see what arrangements could be made since he has not been able to make the payments in regard to the \$1360.00 back payments." (*Id.*) Debtor objects to the Application as his failure to pay has not been deliberate and he did not know how to obtain help to "get back on track now that he understood his obligations." (*Id.*) Debtor requests that "the garnishment be removed, a calculation of his income and expenses be reviewed, and a new contract be implemented so that he can continue to make his monthly payments as he has prior to his termination of supervised release[.]" (*Id.* at 5). Debtor's objections also include an accounting of Debtor's monthly income and expenses and supporting exhibits. (*Id.* at 5, 8-34).

Based on the foregoing, IT IS ORDERED that:

1. Plaintiff shall file a written response to Debtor's filings by no later than June 4, 2024. Plaintiff shall serve its response on Debtor at his address of record and file proof of service with the Court.
2. The Court will set a hearing, as necessary, by separate order following review of Plaintiff's response.
3. Debtor's request for the appointment of counsel is denied without prejudice.
4. The Clerk of Court is directed to serve a copy of this order on Debtor and Garnishee as follows:

- a. Marcelone Hughes, 6665 N. Fresno Street, Apt. 223, Fresno, CA, 93710
- b. City of Fresno, Attn: Payroll, 2600 Fresno St., Rm. 2162, Fresno, CA, 93721.

IT IS SO ORDERED.

Dated: May 28, 2024

/s/ Eric P. Gray  
UNITED STATES MAGISTRATE JUDGE